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## Supreme Court 'double jeopardy' case could affect presidential pardon power

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The Supreme Court is set to hear a case Thursday on whether the states and the federal government can separately charge someone with the same crime — but some of President Trump's opponents fear the justices will end up granting the president a back-door power to shield his allies.

The case involves a two-time felon nabbed on gun charges, and the legal dispute before the court is whether the federal government and the state can bring separate charges for the same offense.

Michael Conway, former counsel for the House Judiciary Committee during its probe into President Richard Nixon, says if the justices rule that only one set of charges can be brought, it would mean Mr. Trump could pardon his allies from federal crimes and shut out the chance that states could bring their own charges.

Other legal analysts dismiss those fears, saying even if the high court were to rule that two sets of charges amount to double jeopardy in violation of the Fifth Amendment, it's not likely to crimp special counsel Robert Mueller's probe and would not stop enterprising state prosecutors from figuring ways to bring charges.

All of that is likely far from the mind of Terance Gamble, who was pulled over in Alabama in 2015 for a broken taillight. He was found to have marijuana and a firearm — a crime in itself, given his felony conviction for second-degree robbery.

The state prosecuted him for the gun violation, and he served a year's prison time. The federal government also prosecuted for the gun violation and won a second sentence, which Gamble is serving at a high-security federal prison in Texas. He's scheduled for release in February 2020.

His legal team says the two prosecutions constitute double jeopardy.

The federal government says it's allowed under what's known as the separate sovereigns exception, which the justices in earlier cases have ruled as valid.

Ilya Shapiro, senior fellow at the Cato Institute, which supports limited government, said that made sense years ago because federal laws had so little overlap with the states'. That's changed now, he said.

“The federal criminal code has exploded, so there is now a lot of overlap between the potential state and federal prosecution,” Mr. Shapiro said.

Both a U.S. district and a federal circuit court of appeals have rejected Gamble's arguments, citing the separate sovereigns doctrine.

He's asking the Supreme Court to undo more than 150 years of cases, dating as far back as 1852, that have defended the separate sovereigns, the Congressional Research Service says.

Should Gamble prevail, it could mean only one prosecution can stem from the same criminal behavior.

Mr. Conway is a leading voice arguing that if that's the case, then Mr. Trump could issue federal pardons for criminal behavior that would prevent states from filing charges for that same behavior, due to double jeopardy. If a Trump aide were to be prosecuted for fraud at the federal level and then pardoned, that aide would be shielded from state charges if they would stem from the same set of facts.

He warned about the potential during the confirmation of Justice Brett M. Kavanaugh, predicting the court will end up ruling 5-4 to limit prosecutions.

"If you believe that Kavanaugh is going to be a supporter of the president, then you would think he is going to join the group to overrule it," Mr. Conway told The Washington Times.

The case has drawn attention beyond legal circles. The Congressional Research Service said a ruling for Gamble could "indirectly strengthen the president's pardon power."

Snopes.com, the fact-checking website, also has determined that claims saying Justice Kavanaugh could deliver stronger pardon power to the president to be true.

But Brienne Gorod, chief counsel for the progressive Constitutional Accountability Center, says the pardon concern is overstated.

"As an initial matter, a pardon on federal charges would, if anything, only block state prosecutions for the 'same offense,'" Ms. Gorod said, adding that leaves room for states to go after other, similar charges.

She note that the high court has ruled that two offenses are not the same unless they require proof of the exact same facts.

Both she and Mr. Shapiro filed a friend of the court brief in favor of Gamble.

"The unlikely alliances on this issue also reflect a shared concern among many progressives and conservatives that there are profound problems in our criminal justice system — one manifestation of which is people being sentenced to jail time twice for the same offense," she said.

Mr. Shapiro predicted the ruling will not come down to a 5-4 ideological split, pointing to the diversity of people backing Gamble's claim.